

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

In re: Tyco International, Ltd.,
Securities Litigation

MDL DOCKET NO. 02-1335-B
This document relates to:
Civil No. 02-cv-266-PB

O R D E R

On October 6, 2008, this court entered a Temporary Restraining Order ("TRO") temporarily barring Dennis Kozlowski, his agents, servants, employees and attorneys, and any other persons in active concert or participation with Kozlowski, from transferring, encumbering, or otherwise disposing of Kozlowski's assets.¹

I make the following findings and rulings in extending the TRO:

1. The court has the power to grant a temporary restraining order to prevent the transfer of the assets that are the subject of Tyco's equitable claims. See, e.g., Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S.

¹ The terms of the TRO are attached hereto and are made a part of this Order.

308 (1999); United States ex rel. Rahman v. Oncology Assocs., P.C., 198 F.3d 489, 496 (4th Cir. 1999).

2. The Anti-Injunction Act does not bar the court from granting the requested relief because Tyco is neither a party to the state court divorce action nor in privity with a party to that action. See, e.g., County of Imperial v. Munoz, 449 U.S. 54, 59-60 (1980); Casa Marie, Inc. v. Superior Court, 988 F.2d 252, 264 (1st Cir. 1993); see also, Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc., 204 F.3d 867, 879-80 (9th Cir. 2000) (noting continued vitality of "stranger to the state court proceeding" exception).

3. Tyco's faithless servant claims are governed by New York law, the jurisdiction with greatest interest in the litigation.

4. The faithless servant doctrine permits an employer to recover all compensation paid to an employee after his first faithless act. See, e.g., Phansalkar v. Andersen Weinroth & Co., L.P., 344 F.3d 184, 211 (2d Cir. 2003).

5. Tyco is likely to succeed on the merits of its faithless servant claims.

6. The payment that Kozlowski made to Tyco as restitution in the criminal case has not fully compensated Tyco for the losses it suffered and the deferred compensation that Tyco has withheld from Kozlowski is not adequate security to insure that Tyco is made whole.

7. The harm that Tyco will suffer if the TRO is not extended will be irreparable because Kozlowski will be free to transfer a substantial part of assets at issue in this action to his ex-wife if the TRO is not extended.

8. The balance of hardships favors Tyco, and Kozlowski will not suffer irreparable harm if the TRO is issued. The court will authorize any specific transfers during the period that the TRO is in place that may be necessary to prevent irreparable harm to Kozlowski while the injunction is in effect.

9. The TRO must be extended to preserve the status quo until the court can rule on Tyco's request for a preliminary injunction.

10. Tyco has substantial assets and will be able to pay any expenses, fees, or damages that it may become obligated to pay in the event that I later determine that the TRO should not have been issued. A bond is not necessary.

For the foregoing reasons, the TRO issued on October 6, 2008 (Doc. No. 1330) is extended until 5:00 p.m. on October 31, 2008, or until further order of the court modifying, extending, or dissolving the TRO. The clerk shall schedule a hearing on Tyco's request for a preliminary injunction. Tyco's request for expedited discovery is granted.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

October 17, 2008

cc: Counsel of Record

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Attachment

In re:

Tyco International, Ltd.;
Securities Litigation

MDL Docket No. 02-1335-B (PJB)

This document relates to:
Civil No. 02-cv-266-PB

TEMPORARY RESTRAINING ORDER

Upon the motion dated October 3, 2008, of Plaintiffs Tyco International Ltd. and Tyco International (U.S.) Inc. (collectively, "Tyco") for a temporary restraining order and a preliminary injunction against Defendant L. Dennis Kozlowski and for other relief (the "Motion"), the Court having heard from counsel for Tyco and Defendant, and good cause having been shown, in order to preserve the status quo pending the determination of the Motion for a preliminary injunction, it is hereby

ORDERED that:

1. Until 5 p.m. October 17, 2008, or, until further order of the Court modifying, extending, or dissolving this temporary restraining order, Defendant L. Dennis Kozlowski, his agents, servants, employees and attorneys, all persons in active concert or participation with said Defendant and all other persons who receive actual notice of this Order by personal service or otherwise, shall not transfer, assign, encumber, sell or dispose of any assets or property, real or personal, tangible or

intangible, in which said Defendant has a legal, equitable, custodial or beneficial interest, except as may be required to pay bills or expenses of said Defendant in the ordinary course (other than any payments in connection with any agreement with or divorce judgment granted to Karen Kozlowski);

2. Tyco shall file a supplemental memorandum by no later than 5 p.m. on October 8, 2008;

3. Defendant shall file a supplemental memorandum by no later than 5 p.m. on October 14, 2008;

4. Tyco will have until 5 p.m. on October 16, 2008 to file a reply to Defendant's memorandum;

5. The Court will decide whether to modify, extend or dissolve this temporary restraining order after the supplemental briefing called for in this order has been submitted.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

October 6, 2008

cc: Counsel of Record